IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL NO. 1845 OF 1984

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge ?

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SAJJANBEN WD/O NATWARSINH SHANKERBHAI CHAUHAN & ANR. - Appellant(s)

Versus

MEHDADKHAN REHMATKHAN PATHAN & ANR. - Respondent(s)

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Appearance :

Shri K.H. Baxi for Appellant(s) : 1 - 2.

Though name of Shri S.N. Shelat is shown as Counsel for Respondent Nos.1 and 2, none appears for them.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 27/07/2007

ORAL JUDGMENT

The appellants-claimants, being aggrieved by the award

dated 24th February, 1984 passed by the learned Motor Accident Claims Tribunal, Ahmedabad in M.A.C.P. No.37 of 1983, is before this Court with a submission that the learned Tribunal below was unjustified in limiting the prospective income of the deceased at Rs.600/- per month.

2. As none appears to tell me that cross objections or cross appeals have been filed challenging the liability in relation to the accident, I am not required to refer to the facts in detail.

3. The deceased was a Constable in the Police Department. He was a young man and according to Shri Baxi, learned Counsel for the appellants, he had the potential to become a Police Sub Inspector if he had survived. Shri Baxi also submits that on the statement of Sajjansinh, witness of the present appellants, the learned Tribunal below could not held that the deceased could reach to the post of Police Head Constable only. According to him, the deceased was holding Secondary School Certificate (S.S.C.) and therefore, it was all likely for him to become the Police Sub Inspector.

4. From the award of the learned Tribunal below, it would appear that the learned Tribunal had taken into consideration the statement of Sajjansinh, Police Head Constable and has come to the conclusion that if he could reach to the post of Police Head Constable on

the age of 55 years, the deceased could also reach to the post of the Police Head Constable. I assume that to be correct for a moment, but, at the same time, I cannot forget that the salary of a person is not to be counted on the basis of basic salary, certain allowances are also payable to the police personnel and even they are entitled to dearness allowance. If all such is admitted into the salary, then, the potential salary even of a Police Head Constable would be much more than what is shown to be the basic salary. Under the circumstances, I hold that the prospective salary of the deceased in view of the formula adopted by the Supreme Court in the matter of ***Smt. Sarla Dixit & Anr. vs. Balwant Yadav & Ors.***, reported in ***AIR 1996 SC 1274***, would be Rs.900/- per month. Giving 1/3rd deductions to the personal expenses of the deceased, I hold that each of the claimants would be entitled to Rs.300/- per month as dependency or Rs.3,600/- per year.

5. In case of the widow-Sajjanben, she would be entitled to an additional sum of Rs.19,200/- in addition to what she has already got on the basis of the addition of Rs.1,200/- per year with the multiplier of 16 (sixteen). Similarly, Shankerbhai, the other dependent, would also be entitled to an additional sum of Rs.14,400/- on the strength of additional dependency of Rs.1,200/- per year with the multiplier of 12 (twelve). The respondents are held jointly and severally liable to pay the amount

with interest at the rate of 6% per annum from the date of application till realisation.

6. In the result, the appeal is allowed to the extent indicated above. No costs.

[R.S.Garg, J.]

*kamlesh**